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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,436	10/13/2000	Alan H. Karp	10992795	8480

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EXAMINER

VO, LILIAN

ART UNIT PAPER NUMBER

2127

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/687,436	<b>Applicant(s)</b> KARP ET AL.	
	<b>Examiner</b> Lilian Vo	<b>Art Unit</b> 2127	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: the rejection was deemed proper.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1 - 17.

Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
**MENG-AL T. AN**  
 Lillian Vo  
 Examiner  
 SUPERVISORY PATENT EXAMINER  
 Art Unit 2127  
 TECHNOLOGY CENTER 2100

Continuation of 10. Other:

1. In response to applicants' remark that figs. 3 and 10 of Bechtolsheim cannot satisfy claim 1, (page 6, 6th paragraph, page 7, 3<sup>rd</sup> paragraph and page 8, paragraphs 7 - 8), the examiner disagrees. Figures 3 and 10 together with the other citations such as col. 10, line 65 - col. 11, line 1 were used to support the rejection of denying request if the request if allowed would cause a grand total allocation of resource to exceed the limit and granting the request otherwise in which the packet is tagged if the buffer count (resource grand total allocation) is greater than the dynamic buffer limit (fig. 3, 340). If the packet is tagged, it is dropped and therefore will not be transmitted to the destination address (col. 10, line 65 - col. 11, line 1). In other words, buffer count has a limit and if the request would result in exceeding the resource availability, the request is not accepting. Therefore, fig. 3 clearly read on the last step of claims (1 and 11) language.

Similarly, fig. 10 shows the comparison of the number buffer of free buffer cells with a reserve number of buffer cells and the comparison of the buffer count with a dynamic buffer limit. In other words, if the number of free cells on its arrival is less than the total reserve set aside for packets, then the packet is tagged (col. 13, lines 46 - 49 and fig. 10: 1005 and 1010 which shows if the size of the arrival packet is greater than the reserve set aside, the packet is tagged (dropped). Applicants misinterpreted the illustration of fig. 10 by stating that "if the number of free cells is already greater than the reserve value, then any incoming packet would be denied, regardless of the resource requirement of the incoming packet (page 8, 1<sup>st</sup> paragraph). This is incorrect. The number of free cells is the resource availability and the reserve value is the total value set aside for the incoming packets (packets size). Fig. 10 shows a comparison between the allocated/reserved space with the incoming packets size. This clearly take into the consideration of the resource requirement of the incoming packets.

2. In response to applicants' remark that fig. 9 of Bechtolsheim does not disclose the subject matter of claim 1, (page 7, 2<sup>nd</sup> paragraph), the examiner disagrees. Figure 9 was used to support the rejection of the soft limit and hard limit usage. As for the "high water mark" limitation, this response is can bee found as stated above, which is interpreted as the limit/threshold for the resource as a whole. Therefore, fig. 9 clearly teaches the usage of soft limit and hard limit as cited in the office action.

3. In response to applicants' argument that "the current obviousness rejection is a classic example of picking and choosing arbitrary elements from unrelated prior art references in an attempt to piece together unrelated elements to achieve the claimed invention, where no motivation or suggestion existed for the combination" (page 9, 3rd paragraph), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

4. In response to applicants' argument (page 9, 3rd paragraph and page 10, 2nd paragraph) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of ordinary skill in the art.

5. In response to applicant's argument that "...Harris fails to disclose or suggest the feature of entering a reduction mode for handling a subsequent requests for allocation of the resource" in col. 12, line 38 – col. 13 line 22 (page 10, 3rd paragraph), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Furthermore, Harris discloses that allocation resource to user is made smaller portion during the reduction time when users hit their limits (col. 12, lines 38 – 45). In other words, an additional or subsequent request for resource allocation would be reduced (granted in a smaller portion) to avoid exceeding the allowance limit. The cited passage clearly read on the claim language. Therefore, the examiner has met a prima facie case of obviousness requirement.

Regarding applicants' remarks with the cited passages such as col. 11, lines 66 – 67, col. 10, lines 17 – 22, 32 – 35, they were not used to support the rejection of claim.

6. Regarding applicants' remark that claim 3 rejection did not provide explanation about low water mark and how it is used and/or disclosed by Bechtolsheim or Harris (page 11, 2nd paragraph), an explanation of the rejection is set forth below. Claim 3 depends on claim 2, which claims about handling the resource allocation in a reduction mode with a low water mark determination. The examiner analyzes the term low water mark as a threshold limit during a reduction mode. By this, it is obvious to one of ordinary skill in the art to recognize that Harris' invention is capable of providing this feature according to passage in col. 12, lines 38 – 45, with the concept of allocating resource to user in a smaller portion during the reduction time when users hit their limits (low water mark). In other words, an additional or subsequent request <sub>2</sub> for resource allocation would be reduced to avoid exceeding the

allowance limit (low water mark) and if the request were above the allowance limit it would not be granted. Therefore, the examiner has satisfied the prima facie case of obviousness requirement for claim 3.

7. With respect to claim 16, it is rejected for the similar reasons as set forth in the response to claim 3 above.
8. With respect to claims 12 and 15, it is rejected for the similar reasons as set forth in the response to claims 2 and 3 above.
9. Regarding claim 17, it would be obvious to one of ordinary skill in the art to recognize that Harris' invention is capable of providing this feature with the concept of allocating resource to user in a smaller portion during the reduction time when users hit their limits (low water mark). In other words, an additional or subsequent request for resource allocation would be reduced to avoid exceeding the allowance limit (low water mark) and if the request were above the allowance limit it would not be granted (applicants' specification page 12, lines 13 - 15). By granting the request, it is automatically entering the normal mode (according to the specification page 12, lines 15 - 16). Therefore, the combination of Bechtolsheim and Harris suggested the feature of claim 17. Thus, the examiner has satisfied the prima facie case of obviousness requirement for claim 17 as set forth above.

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